

**SPOUSES EPIFANIO PEDARSE & ELINA PEDARSE,
PLAINTIFFS-APPELLEES, VS. MARILOU B. YU,
DEFENDANT-APPELLANT.**

Ponente: TIJAM, J.

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TIJAM, J.:

This is an Appeal seeking to set aside the Decision[1], dated April 1, 2009, of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 22, in Civil Case No. 167-M-2006 for “Nullification of Extra-judicial foreclosure of Real Estate Mortgage, Damages and Injunction with prayer for Temporary Restraining Order”, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Annuling the extra-judicial foreclosure of real estate mortgage on the subject property;
- Ordering the defendant Marilou B. Yu, to pay the plaintiffs the amounts of Php100,000.00 as moral damages;
- Ordering the defendant Marilou B. Yu, to pay the plaintiff Thirty Thousand Pesos (Php30,000.00) as attorney's fees.
- Ordering the defendants to pay the costs of suit.

The facts of the case are as follows:

Spouses Epifanio M. Pedarse and Elina Pedarse (“Plaintiffs-Appellees”) obtained a Php100,000.000 loan from Marilou Yu (“Defendant-Appellant”), as evidenced by Kasulatan ng Pagkakautang na may Sanla (“Kasulatan”) dated November 19, 2003. In the Kasulatan, Plaintiffs-Appellees mortgaged a property covered by TCT No. T-70824, located in Tabang, Plaridel, Bulacan to secure the loan.

On March 13, 2006, Plaintiffs-Appellees were notified of an auction sale involving the mortgaged property. Hence, on March 16, 2006, Plaintiffs-Appellees filed a Complaint for “Nullification of Extra-judicial foreclosure of Real Estate Mortgage Damages and Injunction with prayer for Temporary Restraining Order” with the RTC of Malolos City, Bulacan. They alleged that the obligation has already been paid. They also contended that Defendant-Appellant is not authorized to extra-judicially foreclose the property under the mortgage contract. Thus, they prayed that the scheduled auction sale on March 21, 2006 be enjoined, and that Defendant-Appellant be ordered to pay Php200,000.00 as moral damages, Php100,000.00 as exemplary damages, and attorney's fees.[2]

The RTC set a summary hearing for the issuance of a temporary restraining order (TRO) to enjoin the March 21,

2006 scheduled auction sale.[3] However, the issuance of TRO became moot and academic as the auction sale proceeded as scheduled and the mortgaged property was sold to Defendant-Appellant.[4]

In her Answer, Defendant-Appellant denied the material allegations in the complaint and asserted that the foreclosure proceedings was valid. She argued that the stipulation in the Kasulatan stating that “ang kasulatang ito ay ipapatupad sang-ayon sa umiiral na batas ng sanglaan,” constitutes as a sufficient authority for the extra-judicial foreclosure of the property. Specifically, she averred compliance with the posting and publication requirements. She prayed for the dismissal of the complaint, payment of moral damages in the amount of Php50,000.00; exemplary damages in the amount of Php50,000.00 and attorney's fees in the amount of Php50,000.00.[5]

After trial, the RTC rendered a Decision[6] in favor of the Plaintiffs-Appellees. It held that the extra-judicial foreclosure of the mortgaged property was without basis in law and in fact. It also found that the mortgage contract did not contain any special power of attorney empowering the Defendant-Appellant to foreclose the property in case of default. The RTC further ruled that the foreclosure should not have proceeded because the obligation secured by the mortgaged had already been paid. Hence, it ordered the annulment of the foreclosure proceedings and awarded moral damages in the amount of Php100,000.00 and Php30,000.00 as attorney's fees in favor of Plaintiffs-Appellees.

Defendant-Appellant filed the instant Appeal[7], with the following assignment of errors:

- I. WHETHER OR NOT THE LOAN OBLIGATION COVERED BY THE KASULATAN NG PAGKAKAUTANG NA MAY SANLA dated NOVEMBER 19, 2003 IS SUBJECT TO A 5% INTEREST PER MONTH
- II. WHETHER OR NOT THE DEBT OBLIGATION COVERED BY THE SAID KASULATAN AND WHICH WAS SECURED BY THE MORTGAGED PROPERTY HAS ALREADY BEEN PAID.
- III. WHETHER OR NOT THE FORECLOSURE THE MORTGAGED PROPERTY EXTRAJUDICIALLY IS VALID AND PROPER
- IV. WHETHER OR NOT THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES ARE PROPER AND REASONABLE

Defendant-Appellant argues that the RTC erred in nullifying the extrajudicial foreclosure because Plaintiffs-Appellees have not yet settled their obligation with her. She likewise contests the trial court's declaration which disregarded the provision on the 5% monthly interest. She further alleges that the extrajudicial foreclosure was valid as the Kasulatan authorizes her to sell the property in case of default. Lastly, she contends that the award of moral damages and attorney's fees is erroneous.

The appeal lacks merit.

A mortgage is a contract entered into in order to secure the fulfillment of a principal obligation.[8] In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage and to have the property seized and sold, and to apply the proceeds to the obligation.[9]Foreclosure is proper if the debtor is in default in the payment of his obligation.[10]

Based on the recognition that a mortgage contract is an ancillary contract, crucial to the resolution of this case is the determination on whether the principal obligation secured by the mortgage has already been extinguished by payment.

In support of their claim of payment, Plaintiffs-Appellees presented an acknowledgment receipt dated March 13,

2004 signed by Defendant-Appellant showing that the latter received an amount of Php103,785.00 on February 26, 2004.[11] When confronted with the said acknowledgment receipt during the trial, Defendant-Appellant admitted that she received the said amount.[12] She, however, alleged that the Php103,785.00 served as payment for other loans by the Plaintiffs-Appellees.[13]

We agree with Plaintiffs-Appellees that the obligation has already been paid.

As a rule, when the debtor introduces evidence that the obligation has been extinguished, the burden shifts to the creditor to produce evidence to show why payment does not extinguish the obligation.[14] Having acknowledged payment of Php103,785.00, it was incumbent upon Defendant-Appellant to prove that such amount was payment for previous loans contracted by the Plaintiffs-Appellees.

Verily, Defendant-Appellant's testimony as to the application of the Php103,785.00 payment is imbued with inconsistencies. When she was cross-examined, she initially claimed that the Php115,762.80 reflected in the acknowledgment receipt, as the amount due from three debts of Plaintiffs-Appellees other than the one contained in the Kasulatan. In her testimony, she stated that:

ATTY. BERNABE:

Q:

Is it not a fact, madam witness, that according to this index card their indebtedness until February 4, 2004 is Php115,600.00?

A:

For the three indebtedness.

Q: Out of that, a Php103,000.00 was paid, is it not correct?

A: Yes, ma'am.

Q: Leaving a balance of Php11,977.50.

A: For the three indebtedness, yes ma'am.

xxx

Q:

And according to you, madam witness, the plaintiffs already paid the amount of Php103,785.00?

A:

This refers to another document not the one in Exhibit A (Kasulatan)?

xxx

Q:

But, according to you the said Php100,000.00 which was an aggregate of three debts or indebtedness was already paid as of the year 2004, is it not correct?

A:

That is for the Php60,000.00, Php30,000.00 and Php10,000.00 There is another indebtedness in the amount of Php100,000.00 which the Pedarse deny that it should earn an interest and that Php100,000.00 is what I was referring to a while ago is Php193,000.00. (Emphasis supplied)

However, at the end of the same cross-examination, she contrarily declared that the Php115,762.80, as the total amount due from Plaintiffs-Appellees, as contained in the Kasulatan.

ATTY. BERNABE:

Q:

I am showing you another piece of yellow pad. Where in this pad, madam witness, is the payment that the plaintiffs made as instructed to you by the Court?

A:

This Php100,000.00 they borrowed last November 19, 2003 then plus interest as of February 19, 2004. The sum, the total is Php115, 763.00.

Q:

Why?

A:

I deducted from that amount of Php47,904.00.

Q:

Why is it madam witness, that it became Php115,000.00

A:

That is interest of 5% a month.

Q:

So madam witness, my question is where is it in this list, these two sheets are the payments that the plaintiffs made reflected? Because that was the instruction of the Court for you to make list of payments.

Interpreter:

Witness pointing to Exh. "G-1" and in another sheet of yellow pad the figure Php115,763.00 (Emphasis supplied)

Furthermore, an examination of the transcript reveals that despite her earlier claim that the payment made by the Plaintiffs-Appellees was applied to other debts in the amounts of Php Php60,000.00, Php30,000.00 and Php10,000.00, she however declared, later on, that Php103,785.00 was applied to an entirely different debt, contracted way back in 2002.[15] Evidently, as a person engaged in lending[16], she could have easily presented records of payment which can clearly show her claim that the payment was applied to other debts. Indeed, Defendant-Appellant failed to establish its defense against Plaintiffs-Appellees.

We do not agree with Defendant-Appellant's claim that Plaintiffs-Appellees are in default for failure to pay the interest of the loan. As compared to the rest of the provisions in the Kasulatan, it is apparent that the provision on interest had a different font and placement.

We find that the alleged provision in the loan agreement regarding interest is clearly superimposed, hence not binding upon Plaintiffs-Appellees. A simple perusal of other loan documents executed between herein parties would reveal that the provision on interest was usually placed immediately after the amount of the principal obligation. In the Kasulatan subject of foreclosure, however, not only was the interest separately provided from the principal debt, but was placed at the very end of the substantive provisions of the loan instrument.

In view of said obvious discrepancies and glaring intercalation, it is not far-fetched to conclude that the provision on interest was merely inserted by Defendant-Appellant, as an afterthought without being mutually contracted to form part of the Kasulatan.

Defendant-Appellant's sweeping reliance on the public nature of the Kasulatan, being a notarized document, lacks merit. Indeed, while public documents, such as notarized documents enjoy presumption of regularity, their probative weight must however, be evaluated not in isolation but in conjunction with other evidence adduced by the parties in the controversy.[17] As discussed above, the unusual placement and discrepancies between the Kasulatan and other loan documents executed between the parties, are too overwhelming to be simply disregarded by the simplistic invocation of the rule on notarized documents.

We agree with the RTC that the foreclosure was improper in view of the lack of specific authority in the mortgage contract that the mortgagee can sell the property in case of default. The relevant provision of the Kasulatan states that:

"Na ang nasabing pagkakautang ay babayaran sa loob ng 6 na buwan simula sa pagkagawa ng kasulatang ito at pawawalan ng bisa ang nasabing pagkakautang kung ito ay mababayaran sa loob ng takdang panahon, ngunit kung hindi ang kasulatang ito ay patutupad sangayon sa umiiral na batas ng sanlaan ..."

The words in the loan instrument cannot be construed as the requisite special power authorizing the mortgagee to extrajudicially foreclose the mortgage in case of non-payment of the mortgage indebtedness, referred to in the law.

As to the issue on moral damages, it is well settled that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. The statement of Plaintiff-Appellee Epifanio Pedarse in his testimony that the foreclosure of the mortgage affected his work and his feelings[18], was sufficient to justify the court's award of moral damages. We however reduce the award to Php60,000.00 as it is more commensurate to the trouble experienced by Plaintiffs-Appellees in defending their rights to the subject

property.

Anent the award of attorney's fees to Plaintiffs-Appellees, We find the same to be improper. It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award.[19] In this case, the justification given by the trial court is a mere reiteration of the wordings used in Article 2208 of the Civil Code, and without clear factual basis as to which acts constitute the justification for the award of attorney's fees. In the decision, the court simply stated that:

“In a similar manner, plaintiffs prayed for attorney's fees in the amount of thirty thousand pesos (Php30,000.00) representing acceptance fees and one thousand five hundred (Php1,500.00) per hearing. The same is granted based on Article 2208 of the New Civil Code which states that an award of attorney's fees may be recovered, “xxx) When the defendant's act or omission has compelled plaintiff to litigate with third persons or to incur expenses to protect his interest. xxx”

Such superficial statement by the trial court does not meet the standards required by jurisprudence to justify the award of attorney's fees.

WHE REFORE, premises considered, the instant Appeal is DENIED. The assailed Decision is AFFIRMED with MODIFICATION to the effect that the award of moral damages is REDUCED to Php60,000.00 and the award for attorney's fees is DELETED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

Baltazar-Padilla, P.J., and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 60-66.

[2] Records, pp. 3-6.

[3] Records, p. 15.

[4] Records, p. 22.

[5] Records, pp. 24-28.

[6] Rollo, pp. 60-68.

[7] Rollo, pp. 18-33.

[8] Isaguirre v. De Lara, G.R. No. 138053, May 31, 2000.

[9] BPI Family Savings Bank, Inc. v. Sps. Veloso, G.R. No. 141974, August 9, 2004.

[10] Ibid.

[11] Records, p. 67 (dorsal side).

[12] T.S.N. Dated August 2, 2007, p. 9.

[13] Ibid.

[14] G & M (Phil.), Inc. v. Batomalaque, G.R. No. 151849., June 23, 2005.

[15] T.S.N. Dated February 14, 2008, pp. 4-5.

[16] T.S.N dated August 2, 2007, p. 6.

[17] Soriano v. Sps. Galit, G.R. No. 156295. September 23, 2003.

[18] T.S.N. dated June 13, 2006, p. 13.

[19] Philippine National Construction Corporation vs. APAC Marketing Corporation, G.R. No. 190957, June 5, 2013.

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